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SUBJECT: KHMER ROUGE TRIBUNAL BUILDING MOMENTUM

REF: A. PHNOM PENH 1275

[1](#)B. PHNOM PENH 941

[1](#)1. (U) Summary. Following initial criticism of a slow start, progress of the Khmer Rouge Tribunal on a variety of fronts has picked up in July, according to the Open Society Justice Initiative (OSJI). OSJI believes the most significant new development is the court's adoption of the ICC Code of Ethics. A number of issues remain to be resolved, however, including whether international defense counsel will be permitted in the court to participate in the defense of their clients. A major step will be the National Assembly's passage of a Criminal Procedure Code, which will be an indicator of the commitment of the Cambodian government to the process. OSJI believes now that some international judges and prosecutors plus their staff are on the ground, the ECCC is coming together faster than any previous international tribunal. End summary.

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International and Cambodian Judges Meet For The First Time  
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[1](#)2. (SBU) On July 17, A/DCM and Pol/Econ intern met with Heather Ryan and Tracey Gurd from the Open Society Justice Initiative (OSJI) to obtain their perceptions of the joint judicial training sessions organized in early July for the international and Cambodian judges and prosecutors. The following represents OSJI's observations. Ryan highlighted both positive developments and specific gaps in administration as upcoming challenges.

[1](#)3. (SBU) OSJI said that almost all of the Extraordinary Chambers (ECCC) observers commented that the initial training sessions went better than expected. The entire group appeared heavily committed and engaged in the process of drafting the procedures, in contrast with other tribunals in which court officials were only involved in the conduct of the trial itself and not with issues that define the nature and procedures of the court. For example, court officials discussed issues dealing with the "super majority," participation of international defense counsel, victim participation, and the role of pretrial hearings. OSJI's Heather Ryan praised these discussions as an unprecedented achievement in judicial cooperation.

[1](#)4. (SBU) In OSJI's view, the most important development was the decision to adopt the ICC Code of Ethics, which Ryan said was another step toward reaching international standards. The court has also formed two committees: a rules committee and a committee which serves to liaise between judges and administrators. In upcoming months, court officials will finalize internal rules with a goal of further meeting international standards. In October, there will be a formal

vote to decide on which rules to adopt. Following the adoption of rules, the Extraordinary Chambers (ECCC) will move cases to the investigating judges.

15. (SBU) Prosecutors will decide between two approaches: either to evaluate evidence based on geographical regions or by key figures. Prosecutors also discussed the scope of their indictments. Though they will follow the mandate of finding evidence against senior leaders and those most responsible for the crimes, Ryan believed it was possible that prosecutors might go after officials at the district level, many of whom were responsible for numerous deaths. Ryan commented that the Khmer Rouge officials at the district level were often the ones who committed gross crimes against humanity.

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Challenges  
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16. (SBU) Ryan said French judicial officials complained that training sessions were conducted in English and Khmer, omitting the French language. They demonstrated their unhappiness by answering questions at the press conference in French without translation. There has been some concern over the issue of participation from international defense lawyers within the court (see reftel B). However, the ECCC is urging the Cambodia Bar Association to change the Association's internal rules to allow foreign counsel to defend the accused in the court. Overall defense counsel coordination and liaison with the ECCC will be handled by Rupert Skilibeck, an Englishman with experience in Sierra Leone and Rwanda, who is a UN hire loosely affiliated with the ECCC's Office of Administration. Skilibeck hopes to use the trial to raise the standards for defense counsels and help overall reform in

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the Cambodian judiciary.

17. (SBU) OSJI confirmed reports that DC-CAM was reluctant to turn over documents to the ECCC (reftel A). DC-CAM's draft MOU requires that a fee of five dollars will be charged to view an original document in addition to filling out forms that would indicate who wanted to see what form. Prosecutors and defense counsel found this to be problematic due to the sensitive nature of litigation and believed it was unnecessary. (Note: Since reftel A, Chhang has turned over microfilmed documents to the ECCC, but he is still seeking to negotiate the MOU. End Note.)

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ECCC Coming Together Quicker than Previous Tribunals  
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18. (SBU) Ryan said that some of the professional staff hired by the ECCC was excellent, including Steve Heder and Craig Etcheson, who are currently assisting international prosecutor Robert Petit. She noted that OSJI has hired a technical advisor, Wanda Hall, to assist the ECCC with educational outreach. She singled out Peter Foster, who has created innovative media projects for public outreach which are far superior to those used in other international tribunals. On the negative side, the Cambodian prosecutor's office has taken on three staff, two of whom are considered politically biased and easily influenced by the government. Cambodian Prosecutor Chea Leang told Ryan that she had no say in the selections and the RGC was responsible for the choices.

19. (SBU) In the next few months, OSJI anticipates that the Code of Criminal Procedure will be passed by the National Assembly. In Ryan's view, the relative speed with which it is passed will be an indicator of how much traction the ECCC has gained with the Cambodian government.

110. (U) Comment. OSJI believes that now that the judges

and prosecutors are on the ground and committed to the task, this tribunal is coming together faster than any other past international tribunal. The death in the last few days (see septel) of one of the principal defendants in the ECCC, Ta Mok, begs the question whether it will come together fast enough to ensure none of the other elderly defendants eludes justice.

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